1999

Requested

AMENDMENTS to the

**Municipal Government Act** 







Office of the Minister
Responsible for Housing, Consumer Affairs, Registries
and Local Government Services
MLA. Sherwood Park

#### July 1998

Albertans rely on the Municipal Government Act (MGA) to guide the operation of local government. This makes it imperative to keep the provisions of the MGA relevant to the needs of municipalities in today's changing environment.

The present MGA was passed in 1994 and has been strengthened and improved through annual amendment. It is anticipated that the Act will be amended during the Spring 1999 Session of the Legislative Assembly. Stakeholders were therefore invited in March 1998 to submit their suggestions for amendments by mid-June 1998.

I am pleased to present all municipalities and other stakeholders with a summary of the requested amendments that have been received. There are some cases where different stakeholders have expressed differing viewpoints on a particular issue. All have been included for your review and evaluation.

Your positions and recommendations on all the requested amendments are important to me. Please forward your comments by September 10, 1998, to Boyd Oberhoffner, Director, Legislative Projects, at the address given on the following page.

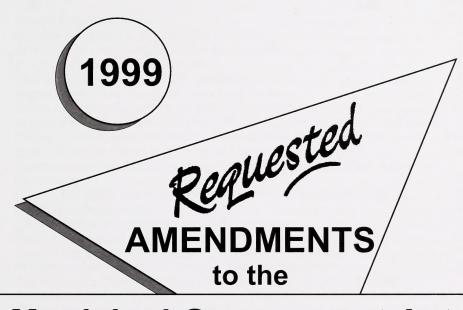
A subsequent consultation document on the requested amendments that receive substantial support from the stakeholders participating in this review process and from Standing Policy Committee will be sent out in October 1998.

Iris Evans



## LOCAL GOVERNMENT SERVICES DIVISION

Municipal Services Branch



**Municipal Government Act** 

Please provide your comments by September 10, 1998, to:

Alberta Municipal Affairs
Municipal Services Branch
Legislative Projects Unit
17th Floor - 10155 102 Street
Edmonton AB T5J 4L4





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**Governance and Administration** 



#### 1 Correct Referential Error

Section 1(1)(n) defines "market value".

There is a referential error in this section where it refers to section 284(r). This reference should read, "…, as defined in section 284(1)(r)".

It is requested that section 1(1)(n) be amended to correct the referential error.

This issue was raised by Legislative Projects, Alberta Municipal Affairs.

# 2 Add Street Lighting to Public Utility Definition

The definition of "public utility" in the Municipal Government Act (MGA) includes systems or works to provide water or steam, sewage disposal, public transportation, irrigation, drainage, fuel, electric power, heat, and waste management. The definition does not include street lighting.

It is requested that section 1(1)(y) be amended to include residential and commercial street lighting in the definition of public utility so that municipalities could bill properties for this service on an ongoing basis.

This issue was raised by the Municipal District of Rocky View No. 44.

# 3 Add General Fee-Charging Power for Councils

A concern has been raised that section 7 does not give council a general power to charge fees.

It is requested that section 7 be amended to give council a general feecharging power.

Sections 8(c)(i) and (ii) give council the power to pass bylaws setting fees for licences, permits and approvals, including those that may be in the nature of a reasonable tax for the activity authorized, for the purpose of raising revenue, or providing that fees can be higher for persons or businesses who do not reside or maintain a place of business in the municipality.

This issue was raised by the City of St. Albert.

#### 4 Add User Fees for Police Services

The previous MGA specifically prescribed the bylaw-making powers of municipalities, including specific authority to charge fees as part of the bylaw. The 1995 rewrite of the MGA introduced the concepts of natural person powers and broad spheres of jurisdiction to guide municipal governance.

Some municipalities have raised the concern that their general jurisdiction to pass bylaws is not specific enough and can be challenged.

It is requested that a provision be added to specifically allow municipalities to charge fees for the provision of certain police services.

This issue was raised by the City of Edmonton.

## 5 Clarify Control of Roads by Municipalities

Part 3, Division 2 outlines municipal powers regarding roads. Section 18 specifies that a municipality has the direction, control and management of all roads within the municipality, subject to certain limitations. If a council wants to close a road, it must follow the procedures outlined in section 22. Unless a road is formally closed, it is deemed to be open and thereby providing legal but not necessarily physical access.

It is requested that the MGA be amended to state that roads are only considered open to vehicular traffic if council so authorizes.

This issue was raised by Alberta Urban Municipalities Association.

# 6 Regulate Electricity Supply to Third Party Sellers

The MGA has provisions regarding the regulation of gas supply obtained from direct sellers and allows the council of a municipality to enter into a tax agreement with an operator of a public utility which supplies fuel.

No such provisions exist with respect to electricity, nor does a municipality have the ability to collect revenues on the value of the electricity being transported for a third party.

#### It is requested that:

- a) a new section be added for electricity which would be the equivalent of section 31 (which addresses regulation of a gas supply obtained from direct sellers through municipal distributors); and
- b) section 360(4) be amended to add "or electricity" after the five references to "fuel" in that section.

These changes may be altered depending on the proposed electrical deregulation.

This issue was raised by the City of Calgary.

## 7 Clarify Approval Process for Waste Management Agreements

The definition of public utility in the MGA includes a system or works for waste management. Where a council wants to enter into an agreement with a person to supply a public utility service, the agreement must be advertised and be approved by the Energy and Utilities Board (EUB).

Concern has been expressed that approval by the EUB for the collection of waste in a municipality is unnecessary and cumbersome.

It is requested that section 45 be amended to reflect that the involvement of the EUB in respect of waste management agreements is on a complaint basis only.

This issue was raised by the EUB and some municipalities.

# 8 Authorize the Chief Administrative Officer to Correct Minor Errors in Bylaws

Section 63(2)(h) provides for the passage of a bylaw to authorize the correction of clerical, grammatical and typographical errors in bylaws.

A concern has been raised that the process is unduly lengthy and complicated for the task.

It is requested that section 63(2)(h) be amended to provide that the power to correct minor errors in bylaws be delegated in the authorizing bylaw to the chief administrative officer.

This issue was raised by the City of Fort Saskatchewan.

# 9 Dispense With Certain Procedural Requirements for Some Bylaws

Section 65 provides for the passage of revised bylaws which are in substitution for existing bylaws. It states that "Revised bylaws that are in effect are deemed to have been passed as if all the requirements respecting the passing and approval of the bylaws for which the revised bylaws are substituted have been complied with."

A concern has been raised that the MGA is unclear about whether council can bypass procedural steps required to amend a bylaw where the amendment is simply a consolidation.

It is requested that section 65 be amended to state specifically that when council enacts a revision of a bylaw, council may dispense with certain procedural requirements, such as hearings or advertisements, if the revision does not make a substantive change to the existing bylaw.

This issue was raised by the City of Edmonton.

#### 10 Clarify Municipal Disposal of Land for Less Than Market Value

Section 70 requires that, with certain stated exceptions, a municipality must advertise any proposal to transfer or grant an estate or interest in land for less than its market value. This means that a municipality cannot dispose of land for anything under market value without first alerting the public of its intention.

There is a concern that the inclusion of the term "transfer" can create problems for a municipality. The underlying issue is that any delay between the time that a municipality sells or leases its land and the time that title is transferred may hinder the task of determining whether the disposal price will be less than market value—and hence whether the disposal needs to be advertised.

It is requested that section 70 be amended by removing the word "transfer" and substituting "sell or grant an estate, lease, licence, permit or interest in."

This issue was raised by the City of Edmonton.

# 11 Clarify Separation of Land From an Existing Municipality to Form a New Municipality

Section 85(1)(a) empowers the Minister to form a municipality upon being requested by the council of a municipality or improvement district.

Section 86(b)(ii) requires the Minister, before a municipality is formed, to consider the viability of "any remaining municipality" continuing to operate as a separate entity.

Section 103(2) requires a municipality which is initiating an amalgamation to notify its intention to annex land which would lie within the boundary of the amalgamated municipal authority, but is not part of that authority.

Section 103(3) relieves a municipality of its responsibility under section 103(2) if the inlaying land comprises the area of an existing municipal authority.

Sections 113 to 128 contain provisions relating to the annexation of land by one municipal authority from another municipal authority.

There is a concern that the specific provisions dealing with the annexation of land from an existing municipality are not matched by specific separation provisions in the Division on Formation and could invite challenges to a proposed formation.

It is requested that the MGA be amended in Part 4 where necessary to specifically authorize the separation of land from an existing municipality for the purpose of forming a new municipality.

This issue was raised by Alberta Justice.

## 12 Change the Name and Status of a Municipality by Ministerial Order

Under section 93, a change in the <u>status</u> of a municipality is initiated when the Minister of Municipal Affairs receives a request from the municipality's council or a sufficient petition from the majority of electors, or is satisfied that the municipality no longer meets the parcel size and population requirements for its existing status. Section 96 provides that the status of the municipality may then be changed by Order in Council upon the Minister's recommendation.

Under section 98, the <u>name</u> of a municipality may be changed, on the recommendation of the Minister, by Order in Council when the municipality's council has requested the change.

The frequency of proposals for name and status changes has been increasing, meaning that Cabinet has had to devote more time to such issues. However, while municipal formations, amalgamations, annexations and dissolutions may be important enough to deserve Cabinet's attention, the same may not be true of name and status changes.

It may be more practical for name and status changes to be implemented by Ministerial Order rather than by Order in Council. If so, sections 96 and 98 would have to be amended to vest the appropriate authority in the Minister. As well, if there were any concerns over having one less level of review in the procedure for changing a municipality's status, the Minister's invitation of public input on a proposed change might have to be made mandatory instead of discretionary (as is presently the case under section 94).

It is requested that sections 96 and 98 be amended to effect changes in the name and status of a municipality by Ministerial Order instead of Order in Council.

This issue was raised by Alberta Municipal Affairs.

#### 13 Clarify Dissolution Orders

The MGA specifies that the Minister of Municipal Affairs must undertake a dissolution study in respect of a municipality if requested by the council of that municipality. The term "dissolution" is not defined in the Act and has led to problems in distinguishing it from "amalgamation". The process for amalgamation is different than that for dissolution.

To avoid confusion as to which restructuring process should be followed in a particular instance, it has been suggested that the MGA allow the preparation of a dissolution study by the Minister to be discretionary rather than mandatory. This would allow some flexibility in the process without predetermining whether the issue is one of amalgamation, formation or dissolution.

It is requested that section 130(2)(a) be amended to read the Minister 'may' rather than 'must' undertake a dissolution study.

It is further requested that section 129 be amended to reflect that this Division does not apply to the dissolution of a municipality as a result of annexation, <u>amalgamation or formation</u>.

This issue was raised by Local Government Issues, Alberta Municipal Affairs.

#### 14 Cross-Reference Sections to Related Sections

There is a concern that related sections are spread throughout the MGA making it more difficult to read, for example:

- Section 170(3)(g) stipulates that a councillor does not have a
  pecuniary interest in a matter if the interest is only due to the councillor
  or a family member being a member or director of a non-profit
  organization.
- Section 241(f) defines a "non-profit organization" as including a credit union established under a law of Canada or Alberta.
- Section 250(c) provides that a municipality may invest its money in securities issued or guaranteed by a bank, treasury branch, credit union or trust company.

It is requested that the MGA be amended by cross-referencing sections to related sections or by clustering all the provisions related to a particular matter.

This issue was raised by the Municipal District of Northern Lights No. 22.

# 15 Require Councillors Seeking Municipal Employment to Resign

Section 174(1)(j) provides that councillors are disqualified from council when they become employees of the municipality.

A concern has been raised that the councillors should have to resign from council when they apply for municipal employment.

It is requested that section 174(1)(j) be amended to provide that councillors cannot continue to hold office when they apply for employee positions with the municipality.

This issue was raised by the Municipality of Crowsnest Pass and the Village of Delia.

## 16 Clarify Eligibility for Re-election of Disqualified Councillors

Section 174(4) provides that councillors who are disqualified under section 174 are eligible to be elected at the next general election if they are otherwise eligible for nomination.

There is a concern that the section does not deter councillors from disqualifying conduct. There is a request to have the period of ineligibility increased.

It is requested that the MGA be amended to provide that disqualified councillors be prevented from running in the next general election after their disqualification.

This issue was a resolution carried by the members of the Alberta Association of Municipal Districts and Counties.

## 17 Strengthen Enforcement of Disqualification of Councillors

Section 175(1) provides that councillors who are disqualified (as per 174(1)) must resign. If the councillor does not resign, section 175(2) allows council or an elector to apply to the Court for an order to have an apparently disqualified councillor disqualified or stating that a person was never, or has ceased to be, qualified to be a councillor.

The MGA does not specifically state that a disqualified councillor is removed from council or cannot exercise the office of a councillor until a judgment is rendered. If the councillor simply ignores the situation, including council's position that disqualification has occurred, or contests the view that disqualification has occurred, the MGA does not allow council to declare that the councillor is disqualified on its own motion.

It is requested that the MGA be amended to provide that disqualified councillors cannot continue to hold office.

This issue was a resolution carried by the members of the Alberta Association of Municipal Districts and Counties.

## 18 Add Automatic Offence for Councillors Breaching Conflict of Interest Provisions

Division 6 of Part 5 of the MGA sets out when a councillor is in a conflict of interest position and what the consequences are. Division 5 of Part 13 sets out offences. Section 566 prescribes a maximum penalty for an offence.

Contravening the conflict of interest provisions is not automatically an offence, as it and similar actions were under the old MGA. Presently, although the maximum penalty is higher, more steps are required to have the councillor's actions classified as an offence. An order must be issued to the councillor under section 545. The councillor must then contravene the order to commit the offence.

There is a concern that the provisions for penalizing councillors who breach conflict of interest provisions are too lax or cumbersome.

It is requested that the MGA be amended to provide an automatic offence and penalties for councillors breaching conflict of interest provisions.

This issue was raised by the Municipal District of Westlock No. 92.

# 19 Change Provisions for Appointment of Councillors to Committees by Secret Ballot

A provision was added to the MGA in 1998 to allow that where council appoints the Chief Elected Official, or council members to council committees or boards, the voting can be done by secret ballot, but the appointment must be confirmed by resolution.

A concern was raised that this section does not appear to do what was intended. It appears to a stakeholder that the section only allows a secret ballot for establishing a committee and not membership on the committee.

It is requested that section 185.1 be amended to allow for the appointment of councillors to committees by secret ballot.

This issue was raised by the City of St. Albert.

# 20 Clarify Majority Needed at Special Council Meetings to Address Matters Other Than Those Stated in Notice of Meeting

Section 194(5) limits the matters transacted at a special council meeting to those stated in the notice of the meeting "unless the whole council is present at the meeting and the council agrees to deal with" another matter.

The present wording does not state explicitly that the whole council must agree to specifically deal with another matter.

It is requested that section 194(5) be clarified as to whether the whole council must vote <u>unanimously</u> to deal with any other matter.

This issue was raised by the Municipal District of Northern Lights No. 22.

#### 21 Allow Resolutions at Private Council Meetings

A concern has been raised that section 197(3) does not allow resolutions at private council meetings other than to revert to a public meeting. This does not allow council to instruct its negotiators or legal counsel confidentially respecting collective bargaining agreements or dispute resolution matters. This prevents the negotiators from having clear instructions on their task.

It is requested that section 197(3) be amended by adding provisions allowing a resolution to instruct negotiators respecting collective bargaining agreements or dispute resolution matters.

This issue was raised by the City of Edmonton.

# 22 Clarify Chief Administrative Officer Advising Council of Legislative Responsibilities

A concern has been raised that new section 208(1)(o) is unclear as to the meaning of "legislative responsibilities" and places too great a burden on administrators.

It is requested that section 208(1)(o) either be amended by providing a definition of "legislative responsibilities", or repeal the section.

An Interpretation Bulletin providing clarification of the new section has been prepared and distributed to all municipalities.

This issue was raised by the Municipal District of Taber.

## 23 Restrict Petitions to Matters Within Council's Jurisdiction

The MGA allows municipalities to receive petitions and hold a vote of the electorate on any matter within their jurisdiction or to obtain information.

A concern has been raised that the petition provisions are too broad and councils are receiving petitions on matters outside their jurisdiction or on which they cannot act (such as Video Lottery Terminals where councils cannot remove Video Lottery Terminals themselves, but can only ask the body with authority to act as per the wishes of the municipality's voters).

It is requested that the provisions allowing for petitions be restricted to allow only those petitions (on subjects) which are within municipal jurisdiction.

This issue was raised by the Alberta Urban Municipalities Association.

#### 24 Petition for a Resolution for a Vote of the Electorate

A concern has been raised that where petitioners wish to have a question put on the ballot for a vote of the electorate, the petition sections only allow this through passage of a bylaw. This process is seen as too cumbersome as plebiscites are within the jurisdiction of council.

It is requested that section 232 be amended to allow the electors to petition for a resolution to have a question on any matter within the jurisdiction of council voted on by the electorate.

This issue was raised by the City of Edmonton.

# 25 Provide Allowance for Recovery of Municipal Costs

Section 243 provides that a municipality must prepare an operating budget that includes the estimated amounts needed to provide for programs. The costs related to taxation would be considered a program and should be included with the expenditures of the operating budget.

It is requested that the MGA be amended to allow for a collection allowance to offset the municipal costs of preparation of the tax roll, production and mailing of notices, collection of taxes and handling of tax appeals.

This issue was raised by the City of Grande Prairie.

## 26 Prevent Liability Claims for Damage Caused by Trees

Section 528 protects a municipality from actions based on nuisance or any other tort that does not require a finding of intention or negligence. The damage must arise from roads or the operation/non-operation of a public utility or a dike, ditch or dam.

There is a concern that the MGA does not protect municipalities for claims based on damage caused by trees or roots of trees on city land.

It is requested that a provision be added protecting municipalities from liability for damage caused by trees.

This issue was raised by the City of Edmonton.

#### 27 Enhance Municipal Inspections and Enforcement

The MGA outlines the conditions under which a municipality may enter on land to investigate lack of compliance with municipal bylaws, including land use bylaws.

Concerns have been raised that these provisions have rendered municipal enforcement time-consuming and ineffective.

It is requested that the MGA be amended to provide municipalities the same inspection opportunities as those of safety codes officers under the Safety Codes Act.

This issue was raised by Leduc County.

# 28 Add Restoring Rights-of-Way Costs to the Tax Roll

Section 553 allows a municipality to add certain types of amounts to the tax roll on a parcel of land. These include unpaid costs or charges for utilities, cleanup, or action by the municipality to remedy some problem with respect to the parcel.

There is a concern that when a licence of occupation for a right-of-way expires, the municipality must pursue the licensee in a debt action for its restoration costs if the licensee has not, as agreed, restored the parcel to the necessary condition. The MGA does not allow the municipality to add these costs to the tax roll.

It is requested that section 553 be amended to allow a municipality to add restoration of rights-of-way costs to the tax roll when the licensee does not restore the right-of-way to the necessary condition at the termination of the licence.

This issue was raised by the City of Edmonton.

## 29 Add Fire-Fighting Costs to the Tax Roll

Section 553 provides that council may add certain amounts to the tax roll of a parcel of land.

It is requested that section 553 be amended to allow council to add the costs of fighting fires to the tax roll. The requested amendment would allow municipalities to allocate costs where they felt it was appropriate and where they had passed a bylaw authorizing such allocations.

This issue was raised by the County of Minburn No. 27.

## 30 Use Certified Copies of Documents in Place of Oral Testimony

A concern has been raised that members of the public and businesses are inconvenienced in municipal business licence bylaw prosecutions by, respectively, having to appear in court to authenticate documents required to be kept as a condition of the licence, and having those documents, which are necessary for day-to-day business, seized and therefore unavailable until the proceedings conclude.

It is requested that a new section (560.1) be added to allow a peace officer to issue a certificate respecting, or make a certified copy of, a document that is required to be kept as a condition of a licence, and to allow that certificate or certified copy to be entered as <u>prima facie</u> evidence of the facts stated in the documents without proof of the signature of the person signing or completing the document or record.

This issue was raised by the City of Calgary.

## 31 Use Certified Copies of Licences in Place of Oral Testimony

A concern has been raised that too much municipal staff time is spent testifying in court proceedings to the existence of a municipal business licence in prosecutions of business licence violations.

It is requested that a new section (564.1) be added to allow a certificate respecting, or a certified copy of, a licence to be entered as <u>prima facie</u> evidence of the existence of a business licence without proof of the signature of the person signing it.

This issue was raised by the City of Calgary.

# 32 Allow for Mandatory Municipal Benefit Plans

The previous legislation allowed a municipality to enter into a compulsory scheme with a union to provide and deliver benefits not subject to individual collective bargaining.

While the current MGA allows a municipality to enter into agreements, there is a concern that the general bylaw-making powers and the natural person powers are not sufficient to prevent individual unions or employee groups from withdrawing from a benefit plan pursuant to the provisions of the Labour Relations Code. The argument is that if membership is optional, unions will

move in and out of the plan to such an extent that the plan will become unworkable.

#### It is requested that the MGA be amended by:

- adding a new section which would allow a municipality, by bylaw to set up, contract for and maintain a benefit plan for civic employees or any group thereof, fire-fighters and police officers.
- adding an additional section which would allow the municipality to require membership in and contributions to the benefit plan by all employees as a condition of employment and to compel employee groups to participate in the plan.

This issue was raised by the City of Calgary.

# 33 Clarify Tax Exemption for Councillors

The previous legislation provided that "A council may provide for the payment of reasonable allowances for travelling and for subsistence and out of pocket expenses incurred in attending meetings affecting the municipality, which shall be paid to members in the manner and at the rates provided by the resolution."

A concern has been raised that the traditional 1/3 income tax exemption for councillors may not be available unless a deeming clause is inserted in the MGA. Apparently some Revenue Canada personnel have taken the position that if this expense allowance has not been statutorily authorized, it is taxable. This would also affect any amounts paid to councillors as a result of their appointment to a committee.

It is requested that the MGA be amended to include a provision to alleviate Revenue Canada's concern.

Between the federal Income Tax Act section 81(3), Revenue Canada's Information Bulletin IT-292, and Custom Clearing House's Canadian Tax Reports commentary, it appears that **either** a deeming clause in the appropriate Act by the provincial government, **or** a resolution or bylaw by the local government for the payment and the payment itself is required to activate the exemption.

This issue was raised by the City of Fort Saskatchewan and the Municipal District of Northern Lights No. 22.



# Requested Amendments for 1999 to the Municipal Government Act Comments Relating to Governance and Administration

Respondent:	
	ition:
Rep	resenting:
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9	Dispense With Certain Procedural Requirements for Some Bylaws
10	Clarify Municipal Disposal of Land for Less Than Market Value
11	Clarify Separation of Land From an Existing Municipality to Form a New Municipality

12	Change the Name and Status of a Municipality by Ministerial Order
13	Clarify Dissolution Orders
14	Cross-Reference Sections to Related Sections
15	Require Councillors Seeking Municipal Employment to Resign
16	Clarify Eligibility for Re-election of Disqualified Councillors
17	Strengthen Enforcement of Disqualification of Councillors

18	Add Automatic Offence for Councillors Breaching Conflict of Interest Provisions
19	Change Provisions for Appointment of Councillors to Committees by Secret Ballot
20	Clarify Majority Needed at Special Council Meetings to Address Matters Other Than Those Stated in Notice of Meeting
21	Allow Resolutions at Private Council Meetings
22	Clarify Chief Administrative Officer Advising Council of Legislative Responsibilities
23	Restrict Petitions to Matters Within Council's Jurisdiction

24	Petition for a Resolution for a Vote of the Electorate
25	Provide Allowance for Recovery of Municipal Costs
26	Prevent Liability Claims for Damage Caused by Trees
27	Enhance Municipal Inspections and Enforcement
28	Add Restoring Rights-of-Way Costs to the Tax Roll
29	Add Fire-Fighting Costs to the Tax Roll

30	Use Certified Copies of Documents in Place of Oral Testimony
31	Use Certified Copies of Licences in Place of Oral Testimony
32	Allow for Mandatory Municipal Benefit Plans
33	Clarify Tax Exemption for Councillors

# Requested

relating to

**Assessment and Taxation** 



#### 34 Modify Pipeline Assessment Process

Section 292 provides that an assessment for linear property would be based upon a report by the operator provided to the Minister by December 31. Section 304 provides that the assessed person for linear property is the operator of the linear property as defined in section 284.

The department is considering a change to its process when preparing assessments for pipelines. It is proposing to use information filed at the Alberta Energy and Utilities Board (AEUB), rather than a reliance on self-reporting, as the basis for the calculation of the pipeline assessment. Because AEUB records would be used, the liability for the taxes would therefore be with the licensee.

It is requested that sections 284(1)(p) and 304(1)(i) be amended to provide for this revised process.

This issue was raised by the Assessment Services Branch of Alberta Municipal Affairs.

# 35 Amend "Parcels of Land" and/or "Improvements" to "Property"

The MGA uses the terms "parcels of land," "improvements," and "property."

It is requested that the reference to "parcels of land" and/or "improvements" throughout the MGA be amended to read "property" as defined in section 284(1)(r).

This issue was raised by the Alberta Urban Municipalities Association.

#### 36 Adopt Annual General Assessments

Section 285 states that each municipality must prepare an assessment annually for each property in the municipality, except for the property specifically listed in section 298. Section 286, which provided for the adoption of assessments, but not in two consecutive years, expired on December 31, 1997. Sections 287 and 288, relating to adopted assessments, expired on the same day.

Smaller communities have raised the issue of financial hardship in preparing assessments annually.

It is requested that section 286 be re-enacted to allow smaller municipalities to adopt an assessment roll every other year.

If section 286 is re-enacted, sections 287 and 288 may also need to be re-enacted.

This issue was raised by the Town of Bashaw.

#### 37 Clarify Appointment of Municipal Assessor

Section 289 provides that a municipality must appoint an assessor to prepare assessments on property other than those prepared for linear assessments. This section does not refer to the qualifications which the assessor must have to prepare assessments for a municipality.

A municipality must advise who the appointed assessor is when reporting their equalized assessment to the department, but it is sometimes unclear as to who that person is, especially if an assessment company has been contracted.

There is a suggestion that the MGA be amended so that the assessor appointed by a municipality must meet the qualifications established in a regulation under section 322(a).

It is requested that section 289 be amended to add "who meets the qualifications as stated in the regulation" after "municipality."

The proposed Qualifications of Assessor Regulation would be drafted so as not to be exclusive, but instead would include members of the Alberta Association of the Appraisal Institute of Canada and the International Association of Assessing Officers and any other valuation professional who met the same standards. This would ensure that municipalities are using qualified assessment professionals as their appointed assessor.

This issue was raised by the Alberta Assessors' Association. The request to be included in the proposed regulation was made by the Alberta Association of the Appraisal Institute of Canada and the International Association of Assessing Officers.

# 38 Provide Information Necessary to Defend an Assessment

Section 295(1) states that a person must provide, on request by the assessor, any information necessary for the assessor to prepare an assessment or determine if a property is to be assessed.

A request has been brought forward to amend 295(1) and related sections to state clearly that the information that must be provided includes information

necessary to assist the assessor in defending a municipal assessment, and to assist the assessor in enforcing the requirement to provide the information.

It is requested that section 294(1) be amended as follows:

After giving reasonable notice to the owner or occupier of any property, an assessor may at any reasonable time, for the purposes of preparing an assessment of the property, determining if the property is to be assessed, or defending a municipal assessment,

- (a) enter and inspect the property,
- (b) request anything to be produced to assist the assessor in preparing the assessment, in determining if the property is to be assessed, or in defending a municipal assessment, and
- (c) make copies of anything necessary to the inspection.

It is requested that section 295(1) be amended as follows:

A person must provide, on request by the assessor, any information necessary for the assessor to prepare an assessment, to determine if property is to be assessed, or to defend a municipal assessment.

It is requested that section 296(1)(b) be amended as follows:

(b) refuses to produce anything requested by an assessor to assist the assessor in preparing an assessment, in determining if property is to be assessed, or in defending a municipal assessment.

It is requested that section 296(2)(b) be amended as follows:

(b) requiring a person to produce anything requested by an assessor to assist the assessor in preparing an assessment, in determining if property is to be assessed, or in defending a municipal assessment.

This issue was raised by the City of Edmonton.

# 39 Obtain Information Necessary to Prepare Assessments

The Municipal Government Amendment Act,1998, introduced a new section 295(4). It states that no person may make an assessment complaint if the person has failed to provide the information requested under section 295(1) on or before February 15 of the year following the assessment year.

Concerns have been brought forward addressing the wording of this amendment with respect to the "information requested." Section 295(1) refers to "information necessary" to prepare an assessment while section 295(4) refers to "information requested." The concern expressed is that the assessor may request information which is <u>not</u> necessary to prepare the assessment.

It is requested that section 295(4) be amended to replace "information requested" with "information necessary."

Section 295(4) refers to "information requested under subsection (1)." The test of the information being "necessary" is therefore included by this reference.

This issue was raised by several tax representatives.

# 40 Clarify Date for Providing Assessment Information

Concern has been raised about section 295(4) regarding the date by which information required to prepare an assessment must be provided. Assessors are preparing the assessments within a municipality during the entire assessment year with the bulk of the data collection and valuation analysis completed prior to year end. Therefore, the information necessary to prepare the assessments, specifically valuation parameter setting information such as income and expense data, should be provided much earlier in the process.

Inventory type information is primarily compiled in the fall of the year and therefore it may be unrealistic to request that information be provided any earlier than December 31 of the assessment year. Assessments must reflect the characteristics and physical conditions as of December 31 of the year prior to the taxation year.

It is requested that section 295(4) be amended by one or more of the following options:

- a) change the February 15 date to November 1 of the assessment year for valuation parameter setting information and to December 31 of the assessment year for inventory type information, or
- b) change the February 15 date to December 1 of the assessment year for valuation parameter setting information and to December 31 for inventory type information, or
- c) change the February 15 date to 60 days after receiving the request for information with final inventory type information to be provided by December 31 of the assessment year, or

# d) change the February 15 date to December 31 after receiving the assessor's request by December 1.

Several municipalities and the Assessment Services Branch of Alberta Municipal Affairs have requested a change to the section, but have suggested different dates and timelines for providing the information.

# 41 Deny Income-Based Assessment Appeals

A concern has been raised that assessment appeals on income-based assessments are allowed even when the municipality cannot obtain income information from the property owner.

It is requested that section 295(4) be amended to prevent an income-based assessment appeal where the owner refuses to provide the assessors with income information necessary to calculate the assessment.

Section 295(4) already prevents an appeal being made when income information necessary to prepare an assessment is not provided on request.

This issue was raised by the City of Grande Prairie.

### 42 Assign Assessment Classes to Property

The MGA currently states that property may be classed into one of the following four classes:

- 1) residential;
- 2) non-residential;
- 3) farm land; and
- 4) machinery and equipment.

A concern was raised about the classing restrictions in section 297 when assigning classes for farm buildings.

It is requested that section 297 be amended to allow farm buildings to be classified as farm property and be taxed at the same level as farm land in an urban municipality.

In addition, there is a suggestion that recreation properties such as golf courses and arenas be classed separately at a lower municipal property tax rate.

It is requested that a new class be allowed for sports and recreation properties.

The farm building issue was raised by the Honourable Lorne Taylor, MLA, Cypress-Medicine Hat and the Assessment Services Branch of Alberta Municipal Affairs.

The issue of classing recreation property was raised by the Municipal District of Rocky View No. 44.

### 43 Clarify Tax Treatment of Crown Land

Section 298(1)(j) provides an assessment exemption for property held by the Crown in a municipal district, improvement district, special area or specialized municipality that is not used or actively occupied by the Crown, or is not occupied under an interest or right granted by the Crown. The exception is property located in hamlets or urban service areas of a specialized municipality.

Urban and rural municipalities are treated differently with respect to Crown lands as these properties would be assessable in an urban municipality. The intent of this legislation was not to require the large tracts of vacant Crown property throughout the Province to be assessed.

The current wording has created an issue in that if an improved property is unoccupied in a rural municipality the tax status changes from grants-in-place-of-taxes to exempt.

It is requested that section 298(1)(j) be amended to provide that "vacant property held by the Crown" in a rural municipality that is not used or actively occupied by the Crown is exempt from assessment.

This issue was raised by Leduc County and the Assessment Services Branch of Alberta Municipal Affairs.

# 44 Reduce Qualifiers for Travel Trailer Exemption

Section 298(1)(bb) states that an assessment is not to be prepared for travel trailers that are not connected to any utility services provided by a public utility **and** not attached or connected to any structure.

It is requested that section 298(1)(bb) be amended so that travel trailers only have to meet one of the criteria to be assessable.

This issue was raised by the County of Red Deer.

# 45 Delete an Assessed Person's Name From Municipal Assessment Rolls

Section 303(b) provides that the name and mailing address of an assessed person be included as part of the information in municipal rolls.

A concern has been raised that since this information is available to the public, privacy and even safety are at risk.

It is requested that section 303(b) be deleted.

This issue was raised by Strathcona County and the Municipal District of Bighorn No. 8.

### 46 Clarify Assessed Persons of Crown-Owned Property

Some concerns have been raised about assessed persons holding a lease, licence, or permit from the Crown.

The first concern is that it is difficult to determine who the assessed person is under the provisions of section 304(1)(c).

Section 416 was amended in 1998 to state that where a parcel of land described in section 304(1)(c) is held under a lease, licence or permit from the Crown in right of Alberta, the Crown must, on a quarterly basis, notify the municipality in which the parcel is located of any changes in the status of the lease, licence or permit.

The second concern raised is that section 304(1) does not adequately account for the assessed person being the Crown. Section 304(1)(a) provides for the assessed person being the owner of the parcel of land.

The third concern raised regards the ability to deal directly with the Crown, under a grant-in-place-of-taxes arrangement, as dealing with tenants is inefficient and often costly.

Section 366 outlines the framework for the payment of grants-in-place-of-taxes. Subsection 366(5) allows the Crown to pay a grant under this section, in respect of property where the Crown is not the assessed person if, in the Crown's opinion, it is appropriate to do so.

It is requested that section 304(1)(c) be amended by replacing "the holder of the lease, licence or permit" with "where the holder is granted an estate, lease, licence, permit or interest."

These issues were raised by the City of St. Albert, the Municipal Government Board, and Grants and Administration, Alberta Municipal Affairs.

### 47 Assess Sites Under Machinery and Equipment

Section 304(1)(a) provides that the assessed person for a parcel of land, unless otherwise specified, is the owner of the parcel of land. Section 304 outlines the different scenarios for assessed property and stipulates who the assessed person is.

Currently, a site located under machinery and equipment is assessed to the owner of the parcel (farm land or other) at the same rates as surrounding land. It is only assessed to an oil company when the company owns both the land and the machinery and equipment.

When a municipality prepares a new assessment under the MGA, a market site under all machinery and equipment will be assessed to each land owner when a well is not on the same titled parcel. If a well is located on the same parcel, the site assessment will reside with the well and will be assessed by Municipal Affairs.

It is requested that section 304(1)(g) be amended to provide that the assessed property will also include a value for the site which would be assessed to the owner of the machinery and equipment.

This issue was raised by Leduc County.

# 48 Expand Property Assessment of Industrial Lease Sites

Section 304(1)(a) provides that the assessed person for a parcel of land, unless otherwise specified, is the owner of the parcel of land. Section 304 outlines the different scenarios for assessed property and stipulates who the assessed person is.

Currently, oil and gas well lease sites on privately-held farm land are assessed and taxed directly to the oil or gas company (the lessee). Other leases on farm land, including buildings and improvements, are assessed and taxed to the owner of the parcel (the farmer). It has been suggested that land leased and used as a battery or gas compressor site should also be assessed and taxed directly to the oil or gas company.

It appears that some municipalities are sending assessment and tax notices for buildings and machinery and equipment on battery and compressor sites directly

to the oil companies. The MGA does not provide for this; rather, the assessment and tax notice should be sent to the property owner.

It is requested that a new section [304(1)(f.1)] be added to provide that property, including buildings and improvements, used for the purposes of battery or compressor sites is to be assessed to the lessee.

This issue was raised by the Farmers' Advocate of Alberta of the department of Alberta Agriculture, Food and Rural Development.

#### 49 Delete an Assessed Person's Name From Assessment Notices

Section 309(1)(a) provides that the name and mailing address of an assessed person be included as part of the information in municipal assessment notices.

A concern has been raised that since this information is available to the public, privacy and even safety are at risk.

It is requested that section 309(1)(a) be deleted.

Sections 300 and 301 provide confidentiality protection.

This issue was raised by Strathcona County and the Municipal District of Bighorn No. 8.

# 50 Clarify Definition of Requisition

Section 326(a)(iv) defines the requisition of hospital districts under the Hospitals Act, health regions under the Regional Health Authorities Act or ambulance districts under the Ambulance Services Act. However, neither the hospital districts nor the health regions have any authority to requisition municipalities.

It is requested that section 326(a)(iv) be amended to remove the reference to hospital districts under the Hospitals Act and health regions under the Regional Health Authorities Act.

Section 326(a)(v) refers to section 11.2 of the Senior Citizens Housing Act, which has been repealed. The section also uses the term "foundation," which is no longer used.

It is requested that section 326(a)(v) be amended to change the reference from section 11.2 of the Senior Citizens Housing Act to section 7 of the

Alberta Housing Act, and further, that the reference to "foundation" be changed to the appropriate terminology.

These issues were raised by Municipal Services Branch of Alberta Municipal Affairs.

#### 51 Delete Taxpayer's Name From Municipal Tax Rolls

Section 329(b) provides that the name and mailing address of the taxpayer be included as part of the information in the municipal tax roll.

A concern has been raised that since this information is available to the public, privacy and even safety are at risk.

It is requested that section 329(b) be deleted.

This issue was raised by Strathcona County and the Municipal District of Bighorn No. 8.

### 52 Delete Taxpayer's Name From Tax Notice

Section 334(1)(a) provides that the tax notice must show the same information required to be shown on the tax roll. This includes the name and mailing address of a taxpayer.

A concern has been raised that since this information is available to the public, privacy and even safety are at risk.

It is requested that section 334(1)(a) be amended to remove the requirement to show the taxpayer's name and mailing address on the tax notice.

This issue was raised by Strathcona County.

### 53 Clarify Recipient of Complaint in Tax Notices

Section 334(1)(e) was amended in 1998 to state that the tax notice must show the name and address of the designated officer with whom a complaint must be filed.

A concern has been raised that some municipalities have made **only** the Chief Administrative Officer (CAO) the designated officer. This would require all

complaints to be filed with the CAO. The concern is that this change will represent an additional administrative step for appellants and the municipality will have to look at ways of maintaining a timely straightforward appeal process.

It is requested that section 334(1)(e) be amended to specify a designated officer, other than the CAO, with whom a complaint can be filed.

This issue was raised by the City of St. Albert.

### 54 Add Deemed Receipt of Electronic Tax Payments

Section 341 provides that a tax payment sent by mail is deemed to have been received on the date of the postmark on the envelope. The deemed date of receipt of the payment is thus determined by a third party (Canada Post).

Some stakeholders have indicated that they are making the majority of their property tax payments by electronic transfer or similar means (such as wire transfer, direct deposit, direct credit, electronic data interchange, or electronic funds transfer).

It is requested that section 341 be amended to provide that when a taxpayer makes a tax payment by electronic transfer of funds or similar arrangement, receipt will be deemed to occur on the date and time shown on the financial institution's transfer record.

This issue was raised by Nova Corporation.

# 55 Clarify Tax Refund on Non-Residential Property

The MGA provides for the assignment of assessment classes to property and allows the non-residential class to be divided only into vacant non-residential and improved non-residential.

Section 354 allows for the setting of tax rates for each assessment class or subclass established in section 297. The intent of the legislation is to allow municipalities to establish a tax rate which is consistent for all properties within the same assessment class.

There is a concern that a municipality may choose to refund part of a tax, as provided for in section 347(1)(b), as a means of reducing the tax payable for some specific properties within an assessment sub-class. This effectively results in a reduced tax rate for certain property within an assessment sub-class which

was not the intent of the legislation. It also may be seen as creating inequities within a municipality.

It is requested that section 347 be amended to state that a council may cancel or refund all or part of a tax but may not utilize this provision as a means of creating a reduced tax rate within a specific assessment class.

This issue was raised by Telus Corporation Inc., TransAlta, and Alberta Power.

### 56 Clarify Surplus Revenues

Section 353 requires a municipality to pass a property tax bylaw annually. The provision authorizes council to impose a tax in respect of property to raise revenue to be used towards the payment of:

- a) the expenditures and transfers set out in the budget of the municipality;
   and
- b) the requisitions.

It has been suggested that some municipalities are collecting significantly more funds than those required for the operation of their municipality. The MGA allows a municipality to collect revenues in excess of the required annual funds for operating the municipality. These funds can be held in an account or can be transferred into a reserve fund. There is no restriction on the amount of revenue a municipality can annually collect which would be in addition to the annual operating requirement.

It is requested that the MGA be amended to limit the amount of surplus revenues.

This issue was raised by Telus Corporation.

# 57 Clarify Tax Rates for Non-Residential and Machinery and Equipment Assessment Classes

There is a concern that the requirement in section 354(3) that machinery and equipment (M&E) and non-residential tax rates must be the same to raise the revenue for payments under section 353(2)(a) is being overlooked because of the way it and section 354(3) are written.

It is requested that sections 354(3) and (3.1) be amended to state clearly that M&E and non-residential tax rates to raise the revenue for payments under section 353(2)(a) must be the same.

This issue was raised by the Municipal District of Northern Lights No. 22.

#### 58 Clarify Minimum Property Tax Amounts

Section 357 allows a municipality to specify a minimum amount payable as property tax in its property tax bylaw.

A concern has been raised that the wording of the section does not reflect the original intention. This was to have a minimum amount payable by all property owners to cover costs that are incurred by the municipality in respect of all properties, regardless of value, and the balance of taxes would be set by some other method related to value.

Some municipalities are using the section to impose a minimum tax in the nature of a flat tax, regardless of property value, to cover all the municipalities' revenue needs.

It is requested that section 357 be amended to provide for principles for levying a minimum tax.

This issue was raised by Local Government Issues, Alberta Municipal Affairs.

# 59 Allow Flexibility for Alberta School Foundation Fund Requisitions

Section 359.1 provides how the Alberta School Foundation Fund requisition revenue can be raised. It stipulates that the tax rate required to raise the revenue needed to pay the requisition must be the same:

- within the assessment class to which the requisition applies if it applies to only one class:
- for all assessment classes that are to be combined if the requisition applies to a combination of assessment classes; and
- for all linear property.

A concern has been raised that the legislation does not provide any flexibility for the local authority in respect of the school tax levy. The requisition stipulates the amount to be collected and which classes of properties to levy. There is a suggestion that the municipality should be able to alter the levy between assessment classes to pattern a levy that best suits the local circumstances.

It is requested that section 359.1 be amended to provide additional flexibility for the local authority in respect of the school tax levy.

This issue was raised by the City of Grande Prairie.

#### 60 Extend Qualification for Property Tax Exemption Applications

The Community Organization 1998 Property Tax Exemption Regulation implemented some of the recommendations of the Non-Profit Organization Tax Exemption Review Committee. The Review Committee's recommendations served to clarify tax exemption provisions and to ensure consistency in the application of tax exemptions throughout the Province. The recommendations were implemented through a combination of the regulation and 1998 amendments to the MGA, one of which is an application process for certain specific properties.

Several municipalities have requested changes to the regulation and/or further amendments to the MGA. The majority of the concerns or issues raised regarding tax exemptions for non-profit organizations will be addressed in the 1999 Regulation intended to recognize the long-term issues for non-profit organizations.

However, one legislative request is to amend the MGA so that any exemption under sections 361 to 363 would require an application prior to granting an exemption.

It is requested that the requirements of section 362(1)(n) for other properties to qualify for an exemption be extended to all other tax exemption provisions, notably sections 361 to 363.

This issue was raised by the City of Calgary.

#### 61 Consolidate "Seniors' Use Property" References in Section 362

The Community Organization 1998 Property Tax Exemption Regulation implemented some of the recommendations of the Non-Profit Organization Tax Exemption Review Committee. The Review Committee's recommendations served to clarify tax exemption provisions and to ensure consistency in the application of tax exemptions throughout the Province.

It has been suggested that the exemptions for seniors' property are confusing because the references are located in a number of different subsections of section 362.

It is requested that all the sections providing exemptions for "seniors' use property" be consolidated into one subsection of section 362, and any definitions required to be placed in section 284.

This issue was raised by the Alberta Urban Municipalities Association.

# 62 Change Property "Held" by a Health Region to "Owned"

Concern has been raised by a number of municipalities that property that is leased by a health unit is exempt if it is used by the health unit under the Regional Health Authorities Act. It is felt that the only properties that should receive this exemption are those owned by the health unit.

It is requested that section 362(g.1) be amended by changing the term "used" to "held".

This issue was raised by the Alberta Urban Municipalities Association.

## 63 Change Tax Status of Residential Property Held by a Non-Profit Organization

The MGA does not allow for any assessment exemptions for residential property unless it is a designated manufactured home held in storage and forming part of the inventory of a manufacturer or dealer. The legislation also does not allow for any tax exemptions on residential property except for the tax exemptions provided for farm land residences under the Property Tax Exemption Regulation or residential property owned by a municipality.

All residences are assessable and taxable except for specific cases where a tax exemption is granted.

It is requested that section 362(1)(n)(i) be amended to exclude residences from the tax exemption provided in that section.

This issue was raised by the Municipal District of Foothills No. 31.

### 64 Tax Seniors' Housing Facilities

The Community Organization 1998 Property Tax Exemption Regulation implemented some of the recommendations of the Non-Profit Organization Tax Exemption Review Committee. The Review Committee's recommendations served to clarify tax exemption provisions and to ensure consistency in the application of tax exemptions throughout the Province.

In addition, amendments to the MGA in 1998 allowed a council to pass a bylaw to make **any** property that is exempt from taxation under 362(1)(n) subject to taxation to any extent that it considered appropriate other than properties that are exempt under the provisions of 362(1)(n)(i), (ii), and (iv). Seniors' housing

would be exempt if it qualified under 362(1)(n)(iv), and therefore would remain exempt regardless.

A concern was raised that municipalities would be required to exempt a seniors' housing facility that is owned or held by an unsubsidized non-profit organization that met the exemption criteria in the Regulation, thus redistributing to and increasing the tax burden on other residential properties. This is particularly critical in municipalities where there is a number of seniors' housing facilities.

It is requested that section 362(2) be amended to allow a municipality to pass a by-law to make any property that is exempt from taxation under subsection 362(1)(n)(iv) to be subject to taxation to any extent the council considers appropriate.

This issue was raised by Mr. Norm Mayer, Mayor of the City of Camrose.

# 65 Clarify Taxing Non-Profit Organizations in Privately-Owned Facilities

The Community Organization 1998 Property Tax Exemption Regulation implemented some of the recommendations of the Non-Profit Organization Tax Exemption Review Committee. The Review Committee's recommendations served to clarify tax exemption provisions and to ensure consistency in the application of tax exemptions throughout the Province. The recommendations were implemented through a combination of the regulation and 1998 amendments to the MGA.

Several concerns have been raised about non-profit organizations using privately-owned facilities. These concerns include:

- There is no assurance that the exemption is passed on to the non-profit groups that rent the facility.
- It is difficult to maintain a record of when non-profit groups occupy or vacate the facility or change the amount of space occupied.
- Special arrangements can be made between the landlord and the nonprofit organization where the landlord may be covering the operating expenses, which includes the property tax component, and obtains a charitable donation receipt from the non-profit group.

It is requested that section 362 be amended to only allow a tax exemption for non-profit organizations, under sections 362(1)(n)(ii) and 362(1)(n)(iii), that are <u>not</u> in privately-owned facilities. A provision could be made for non-profit groups operating in privately-owned facilities to apply to the

municipality for a tax rebate if they meet the qualification for exemption and upon proof of tax payment to the owner.

This issue was raised by the City of St. Albert.

# 66 Change Exemptions for Non-Profit Organizations

Several municipalities have requested changes to the Community Organization 1998 Property Tax Exemption Regulation and/or further amendments to the MGA regarding non-profit organizations. One legislative request is to remove the ownership criteria required to qualify for a tax exemption for property used for a charitable or benevolent purpose that is for the benefit of the general public.

It is requested that section 362(1)(n)(iii) be amended to change the provision that the property must be "owned by" to "held by" the Crown, a municipality, any other body that is exempt from taxation under the Property Tax Division or a non-profit organization to qualify for a tax exemption.

The majority of the concerns or long-term issues raised regarding tax exemptions for non-profit organizations will be addressed in the 1999 Regulation.

This issue was raised by the City of St. Albert and the City of Calgary.

### 67 Clarify Notice Provisions

Section 362(3) provides that where a council of a municipality has passed a bylaw under subsection (2) which can make specific exempt properties taxable, it must notify any person or group that will be affected of the proposed bylaw.

The section does not stipulate how the notification must be given. It is suggested that the notice should be in writing to be consistent with other notice provisions in the MGA.

It is requested that section 362(3) be amended to state that notification by the municipality to any person or group that will be affected must be given in writing.

This issue was raised by Legislative Projects, Alberta Municipal Affairs.

# 68 Add Property Used and Held by a Specific French Non-Profit Organization as a Specific Exemption

The MGA and the attendant Community Organization 1998 Property Tax Exemption Regulation have provisions which grant an exemption to an organization if the ethno-cultural organization meets certain criteria.

Some concern has been raised by a French non-profit organization in the City of Calgary which feels that it would like to be exempt but does not wish to apply under the ethno-cultural provisions in the Community Organization 1998 Property Tax Exemption Regulation.

It is requested that the MGA be amended to allow for a specific exemption for this organization.

This issue was raised by the City of Calgary and La Societe du Centre Scolaire Communautaire de Calgary.

# 69 Repeal Exemptions Granted by Bylaw for Non-Profit Organizations

The MGA and the Community Organization 1998 Property Tax Exemption Regulation provide a number of specific and general categories which allow a municipality to exempt non-profit organizations from municipal and school requisitions.

Some concern has been raised regarding this provision. It appears that the same criteria are used in section 364 and the Community Organization 1998 Property Tax Exemption Regulation, thus making this section redundant. It is felt that any other properties that are considered would have to meet the tests of the Regulation, and therefore would be granted an exemption under those provisions, or be rejected entirely. It has been suggested that the department should relax the requirement for the properties to contribute to the Alberta School Foundation Fund.

It is requested that section 364 be repealed as it appears to be redundant since the Community Organization 1998 Property Tax Exemption Regulation took effect.

This issue was raised by the City of Calgary.

### 70 Clarify Tax Status of Licenced Property

Section 365 provides for the tax status of property licenced under the Gaming and Liquor Act.

Section 365(1) states that all property licenced under that Act is **not** exempt from taxation despite the tax exemption provisions provided for in sections 351(1)(b) and 361 to 364.

Section 365(2) further states that, despite 365(1), property listed in section 362(n) in respect of which a liquor licence that is specified in the regulations has been issued **is** exempt from taxation.

A concern has been raised that **all** licenced premises or the licenced portion of premises should be subject to taxation.

It is requested that section 365 be amended to provide that all licenced premises or the licenced portion of the premises are subject to taxation.

This issue was raised by the City of St. Albert and the City of Calgary.

#### 71 Expand Grants-in-Place-of-Taxes

The Community Organization 1998 Property Tax Exemption Regulation implemented some of the recommendations of the Non-Profit Organization Tax Exemption Review Committee. The Review Committee's recommendations served to clarify tax exemption provisions and to ensure consistency in the application of tax exemptions throughout the Province. Included in the review were those properties used for arts and museums. The consensus was that the Jubilee Auditoriums and provincial museums would be exempt.

A number of concerns have since been raised.

First, the Crown's intention was that the Jubilee Auditoriums in Edmonton and Calgary would not be subject to grant-in-place-of-taxes. This would have occurred had the facilities been turned over to separate non-profit organizations to operate. This type of agreement did not occur; rather, a service contract was entered into for some specific functions such as ticket sales, coat checking and liquor sales.

Secondly, it is felt that "historical sites" is a very broad term that has the potential to include any property considered as having historical significance.

Thirdly, in some cases historic sites are used for other purposes, such as government offices. In those cases the Crown may wish to pay a grant-in-place-of-taxes.

It is requested that the MGA be amended in the following three areas:

- 1. to reflect an exemption for the Jubilee Auditoriums similar to the exemption for museums;
- 2. in section 366(3)(b), "museums and historical sites" should be amended to read "museums and designated historic sites"; and
- 3. in section 366(5), include a reference to 366(3)(b) to (g) that would simply give the grants administration the ability to exercise its discretion regarding grant payments.

This issue was raised by Assessment Services Branch of Alberta Municipal Affairs.

### 72 Pro-rate Property Assessment and Taxation of Airport Leases

The property held by a Regional Airport Authority is taxable to the Airport Authority except for specific items exempt from assessment under section 298(1)(x). Any property or part of a property held under a lease from the Airport Authority is assessed to the holder of the lease [section 304(1)(e)].

Section 368 provides for changes in taxable status for property. It also allows for the pro-ration of taxes payable when the taxable status changes.

When a lessee changes during the year, the property reverts back to the Airport Authority before the next lessee takes over. The Airport Authority becomes the assessed person as of the date of termination of the lease. This is not considered to be a change in tax status and therefore no pro-rating of the leased area assessment can occur. The Airport Authority would be responsible for assigning the portion of the tax amount to each lessee throughout the year in the individual lease agreements.

It is requested that section 368 be amended to allow the municipality the authority to pro-rate taxes to a property based on different lessees in the same area during one year.

This issue was raised by Leduc County.

### 73 Add Another Method for Determining Business Assessment Value

Section 374(1)(b) provides four methods that can be used to prepare an assessment for businesses operating within the municipality which are then to be recorded on the business assessment roll.

A suggestion has been made to add net annual rental value standard as another method of determining business assessment values. The net annual rental value standard would allow business assessments to be determined by, and be more reflective of, the data and analysis that will be used to prepare market value property assessments for the types of properties in which businesses are generally located.

It is requested that section 374(1)(b) be amended to add the following subsection:

"(v) assessment based on the net annual rental value of the premises."

This issue was raised by the City of Calgary.

### 74 Expand Collection of Business Revitalization Zone Tax

Section 381 authorizes the Minister to make regulations regarding a business revitalization zone tax. In addition, section 374 specifies methods of preparing assessments for business tax. The business tax and the business revitalization zone tax are levied on the business owner, not the property owner.

It is requested that the MGA be amended to increase the options available to collect a business revitalization zone tax in instances where the municipality has rescinded its business tax. Specifically, it was requested that the amendment allow for special tax provisions in Division 5 of Part 10 to be used to collect these funds.

This issue was raised by the City of Red Deer.

# 75 Restrict Definition of Business for Exemption From Business Tax

Section 374(2) states that a business tax bylaw may specify classes of business that are exempt from taxation under the Business Tax Division.

The Municipal Government Amendment Act, 1998, added a provision (section 374.1) which states that a municipality is not required to prepare an assessment for any business in a class of business that is exempt from taxation under the business tax bylaw. It also added a subsection, 375(d), which states that a business operated by a non-profit organization on property that is exempt from taxation under section 362(1)(n) is also exempt from business tax.

Both of the above amendments were recommendations from the Non-Profit Organization Tax Exemption Review Committee. The Review Committee wanted to ensure that any property held by a non-profit organization that qualified for a property tax exemption would also be granted an exemption from business assessment and business tax.

It is requested that the MGA be amended to restrict the definition of business to the point where commercial or profit-motivated operations, as well as their competitors who are established as non-profit organizations, are subject to business assessment and taxation without the need to assess and/or tax all non-profit organizations.

The above two amendments made in 1998 appear to achieve the result of amending the definition of business.

This issue was raised by the City of Calgary.

### 76 Clarify Tax Status of Linear Property in Business Premises

Section 376(1) states that when a property tax has been imposed for machinery and equipment or for linear property on premises occupied for the purposes of a business, the premises on which that property is located are exempt from taxation.

Concerns have been raised that this section is not clear whether the tax exemption applies to the part of the premises where the assessed linear property is located or whether the tax exemption applies to the entire premises.

It is requested that section 376(1) be amended to state that linear property must actually be located, assessed and taxed on part of the premises for that part of the premises to qualify for an exemption. The entire premises would not qualify for an exemption.

This issue was raised by the City of Edmonton and the Assessment Services Branch of Alberta Municipal Affairs.

# 77 Change "Parcel of Land" to "Property" in Special Tax Provision

Section 387 states that the person liable to pay the special tax is the owner of the "parcel of land."

It is suggested that the "parcel of land" reference should instead read "owner of the property." Municipal Services Branch observed this reference as an irregularity in the property and taxation provisions.

It is requested that section 387 be amended to change "parcel of land" to "property."

If section 387 is amended, then the reference in 553(f) should also be amended.

This issue was raised by Legislative Projects, Alberta Municipal Affairs.

## 78 Vary Local Improvement Tax Rate

Section 403 provides for the amendment of a local improvement bylaw in circumstances where council receives additional financial assistance, refinances a debt at a lower interest rate, or where an alteration is necessary as a result of an assessment appeal under Part 11 (assessment review board) or Part 12 (Municipal Government Board).

There is no provision for the amendment of a local improvement bylaw where costs have increased. Municipalities have an obligation to carefully determine the cost of any improvements constructed pursuant to a local improvement bylaw. However, there are circumstances where, through no fault of the municipality, even the most careful calculation of costs or expenditure of funds may be insufficient.

To require the ratepayers at large to pay for these overages through taxes when they do not receive any benefit from the improvement is not consistent with the intent of the local improvement process.

It is requested that section 403 be amended to add a provision allowing for the revision of a local improvement bylaw where costs have increased, subject to conditions or controls which would be necessary to ensure that cost estimates are not intentionally underestimated.

This issue was raised by the City of Fort Saskatchewan.

### 79 Eliminate Equalized Assessments

A concern has been raised that the concept of equalized assessments for municipalities should be eliminated, particularly where municipalities are at market value for assessment purposes, subject to a quality test in terms of percentage of market value.

It is requested that the concept of equalized assessment be eliminated.

This issue was raised by the City of Grande Prairie.

# 80 Refund Overpayment of Property Tax

Assessment complaints can take a number of years to be resolved. When a decision is finally made, the municipality can be in possession of funds which are claimed by two or more parties. There are no provisions in the MGA which provide direction on how a municipality should address this.

It is requested that a new section be added in Part 11 to direct that when a property is sold with an unresolved assessment complaint or appeal, the purchaser acquires the right to any refund of overpayment of taxes resulting from the resolution of the assessment complaint or appeal, unless other arrangements are entered into by the purchaser and vendor and notice has been served on the municipality of these arrangements prior to the mailing or delivering of the refund by the municipality.

This issue was raised by the City of Calgary.



# Requested Amendments for 1999 to the Municipal Government Act Comments Relating to Assessment and Taxation

Respondent:			
Pos	ition:		
Rep	Representing:		
34	Modify Pipeline Assessment Process		
35	Amend "Parcels of Land" and/or "Improvements" to "Property"		
36	Adopt Annual General Assessments"		
37	Clarify Appointment of Municipal Assessor		
38	Provide Information Necessary to Defend an Assessment		

39	Obtain Information Necessary to Prepare Assessments
40	Clarify Date for Providing Assessment Information
41	Deny Income-Based Assessment Appeals
42	Assign Assessment Classes to Property
43	Clarify Tax Treatment of Crown Land
44	Reduce Qualifiers for Travel Trailer Exemption

Delete an Assessed Person's Name From Municipal Assessment Rolls
Clarify Assessed Persons of Crown-Owned Property
Assess Sites Under Machinery and Equipment
Expand Property Assessment of Industrial Lease Sites
Delete an Assessed Person's Name From Assessment Notices
Clarify Definition of Requisition

51	Delete Taxpayer's Name From Municipal Tax Rolls
52	Delete Taxpayer's Name From Tax Notice
53	Clarify Recipient of Complaint Tax Notices
54	Add Deemed Receipt of Electronic Tax Payments
55	Clarify Tax Refund on Non-Residential Property
56	Clarify Surplus Revenues

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57	Clarify Tax Rates for Non-Residential and Machinery and Equipment Assessment Classes
58	Clarify Minimum Property Tax Amounts
59	Allow Flexibility for Alberta School Foundation Fund Requisitions
60	Extend Qualification for Property Tax Exemption Applications
61	Consolidate "Seniors' Use Property" References in Section 362
62	Change Property "Held" by a Health Region to "Owned"

63	Change Tax Status of Residential Property Held by a Non-Profit Organization
64	Tax Seniors' Housing Facilities
65	Clarify Taxing Non-Profit Organizations in Privately-Owned Facilities
66	Change Exemptions for Non-Profit Organizations
67	Clarify Notice Provisions
68	Add Property Used and Held by a Specific French Non-Profit Organization as a Specific Exemption

9	Repeal Exemptions Granted by Bylaw for Non-Profit Organizations
)	Clarify Tax Status of Licenced Property
	Expand Grants-in-Place-of-Taxes
2	Pro-rate Property Assessment and Taxation of Airport Leases
3	Add Another Method for Determining Business Assessment Value
	Expand Collection of Business Revitalization Zone Tax

75	Restrict Definition of Business for Exemption From Business tax
76	Clarify Tax Status of Linear Property in Business Premises
77	Change "Parcel of Land" to "Property" in Special Tax Provision
78	Vary Local Improvement Tax Rate
79	Eliminate Equalized Assessments
80	Refund Overpayment of Property Tax



**Assessment Complaints and Appeals** 



# 81 Allow Members to Sit on More Than One Assessment Review Board

On receiving a complaint about a property assessment, a municipality must, by bylaw, establish one or more assessment review boards. Council must appoint a minimum of three members to each assessment review board.

However, the MGA does not state that an assessment review board member can sit on other assessment review boards.

It is requested that section 454 be amended to allow council to designate one member of each assessment review board as an ex-officio member of any other assessment review board.

This issue was raised by City of Calgary.

# 82 Limit Right of Assessment Complaint to Assessed Persons

Section 460 sets out the rights and responsibilities of a person who wishes to complain to an assessment review board about "any assessment or tax". Under section 460(3), complaints may be made only by an assessed person or taxpayer.

Section 470 provides for the appeal of a decision by an assessment review board to the Municipal Government Board. Under section 470(2), the appellant may be an assessed person, a taxpayer, an assessor or an affected municipality.

There is a stakeholder concern that the term "taxpayer" could include federal or provincial income taxpayers or Goods and Service Tax payers. Furthermore, it is claimed that a separate reference to a taxpayer is unnecessary because an assessed person is automatically a taxed person.

It is requested that sections 460 and 470 be amended to limit the right of complaint about an assessment or tax to assessed persons only.

The MGA's definitions of the terms "tax" and "taxpayer" (in sections 1(aa) and 1(bb), respectively) indicate that, for the purposes of the Act, a taxpayer is a person who pays a property tax, business tax, business revitalization 3-acre tax, a special tax, well drilling equipment tax or local improvement tax.

This issue was raised by the City of Calgary.

# 83 Deny Assessment Complaints and Appeals if Required Fees Not Paid

The MGA states that a person wishing to make a complaint about any assessment or tax notice must do so in accordance with section 460. In addition, section 481 stipulates that council may set fees payable by persons wishing to make a complaint to the assessment review board.

There is a concern that section 460 does not make the filing of a fee a prerequisite to a complaint being heard.

It is requested that the MGA be amended to state that an assessment complaint and subsequent appeal may be made only if the required fee, set by council, has been paid.

This issue was raised by the Municipal Government Board.

# 84 Allow Assessment Review Boards to Dismiss Assessment Complaints for Lack of Evidence

Section 467(1) sets out the decisions that may be made by an assessment review board (ARB) after holding a hearing on a complaint. A board can dismiss the complaint, change certain details on the assessment or tax notice, or leave the assessment or tax roll unchanged.

Under section 467(1)(a), a complaint may be dismissed if it was not made within the proper time. As a result of a 1998 amendment, a complaint may also be dismissed if it does not explain why the complainant thinks the information on an assessment or tax notice is incorrect.

It is requested that section 467 be amended to allow assessment review boards to dismiss complaints for lack of evidence.

Section 467(1)(a) indicates that there is an onus on a complainant to explain fully to the assessment review board why the information on the assessment or tax notice is incorrect and can therefore be a basis for complaint. Failure to provide a reason for a complaint would appear to constitute a lack of evidence.

This issue was raised by the City of Edmonton.

#### 85 Extend Time Limit for Assessment Review Board Decisions

Section 468 states that an assessment review board must make a decision on complaints related to property tax or other tax where a complaint may be filed to an assessment review board within 150 days after the respective assessment or tax notices have been sent out.

A concern has been expressed that the time frame may be insufficient when dealing with a large volume of complaints.

It is requested that section 468 be amended to double the time for making decisions from 150 to 300 days.

Under section 605, the Minister may by order alter dates and time periods and specify another number of days or another day for carrying out the task.

This issue was raised by the City of Edmonton.

### 86 Establish Maximum Fees for Assessment Complaints

Section 481(1) states that a council may set fees payable by persons wishing to make complaints or to be involved as a party or as an intervenor in a hearing before an assessment review board. This fee is refundable if the decision of the assessment review board is in favour of the complainant.

Some taxpayers have protested that the fees set by council are exorbitant. If the assessment review board confirms their assessment (they therefore cannot get a refund), they are forced to appeal to the Municipal Government Board. The fee paid to the municipality is not refundable if the decision of the Municipal Government Board is in favour of the complainant.

It is requested that section 481 be amended to include a maximum fee which can be levied by a municipality for an assessment complaint. This maximum fee would be established for each assessment class provided for in section 297.

This issue was raised by the Assessment Services Branch of Alberta Municipal Affairs

#### 87 Modify Assessment Review Board Structure

On receiving a complaint about a property assessment, a council must establish by bylaw one or more assessment review boards. By contrast, when an assessment appeal is submitted to the Municipal Government Board, the administrator must select at least one member of the Board to sit as a panel of the Board.

It is requested that the equivalent of the provision in section 487 regarding the Municipal Government Board (selecting members of a large board to sit as a panel of the board) be enacted for assessment review boards.

This issue was raised by the City of Edmonton and the City of St. Albert.

# 88 Clarify Jurisdiction of Panels of One for Assessment Review Boards

A concern was raised in the preparations for the 1998 amendments about the description in the March 1998 consultation document of the subject matter of panels of one. The jurisdiction was described as covering matters of a minor or routine nature. The stakeholder felt this would lead to challenges.

It is requested that the jurisdiction of panels of one for assessment review boards be clarified.

The wording in section 48 of Bill 34 which amended section 487 did not state that panels of one would deal with matters of a minor or routine nature. New section 484.1 allows the Minister to make regulations respecting, among other matters, the jurisdiction of assessment review boards. A regulation covering these matters is being prepared.

This issue was raised by the City of Edmonton.



### Requested Amendments for 1999 to the Municipal Government Act Comments Relating to Assessment Complaints and Appeals

Respondent:	
Posi	ition:
Rep	resenting:
81	Allow Members to Sit on More Than One Assessment Review Board
82	Limit Right of Assessment Complaint to Assessed Persons
83	Deny Assessment Complaints and Appeals if Required Fees Not Paid
84	Allow Assessment Review Boards to Dismiss Assessment Complaints for Lack of Evidence
85	Extend Time Limit for Assessment Review Board Decisions

86	Establish Maximum Fees for Assessment Complaints
87	Modify Assessment Review Board Structure
88	Clarify Jurisdiction of Panels of One for Assessment Review Boards

# Requested **AMENDMENTS**

relating to

**Tax Recovery Process** 



### 89 Recover Costs Related to Contaminated Parcels

Section 410(c.1) defines remedial costs as expenses incurred to perform work under an environmental protection order or an enforcement order issued under the Environmental Protection and Enhancement Act.

A concern has been raised that this definition restricts the definition of remedial costs to only those costs incurred by the Province. This definition will not allow a municipality to recover the costs incurred even in the event of a tax sale. There is no ability to add these costs to the tax roll.

It is requested that section 410(c.1) be amended to extend the definition of remedial costs to costs incurred by municipalities under an environmental protection or enforcement order.

This issue was raised by the City of Calgary and the City of St. Albert.

### 90 Deny Removal of Tax Recovery Notification

Under section 4.2 of the former Tax Recovery Act, when a tax recovery notification was placed on a title to a parcel, the Registrar could not cancel the certificate of title to the parcel without the consent of the municipality at whose instance the notification was placed. It is suggested that the present MGA does not include this provision and therefore parcels with tax recovery notifications filed against can change ownership without the municipality receiving payment of arrears of taxes related to the lands.

It is requested that a new section be added to the MGA that would state that the Registrar could not remove a tax recovery notification without the consent of the municipality that requested the notification.

Section 413(4) already makes that provision.

This issue was raised by the County of Barrhead.

### 91 Enforce Collection of Rent for Tax Arrears

Section 416 provides a mechanism for a municipality to collect rent payments from a person who holds a parcel under a lease from the owner when the owner is in tax arrears on that parcel.

## It is requested that the MGA be amended to include a provision for enforcement of section 416.

It should be noted that where the MGA grants a municipality the authority to collect funds but does not provide a penalty for non-compliance, a municipality has the authority to bring civil action against the person as provided for in section 411.

This issue was raised by the City of Grande Prairie.

### 92 Add Rural Electrification Liens on Title of Tax Recovery Lands

Section 423(1) provides that a person who purchases tax recovery land at a public auction acquires the land free of all encumbrances except for the following:

- encumbrances arising from claims of the Crown in right of Canada,
- irrigation or drainage debentures,
- registered easements and instruments registered pursuant to section 72 of the Land Titles Act.
- right-of-entry orders as defined in the Surface Rights Act registered under the Land Titles Act,
- liens under section 36 of the Rural Utilities Act, and
- liens under section 15 of the Rural Electrification Loan Act.

The specified exceptions do not include liens filed under the Rural Electrification Long Term Financing Act.

The provisions of the Rural Electrification Long Term Financing Act take precedence over the MGA provisions. As a result, these liens are not removed from tax recovery land when it is sold or transferred to a municipality after 15 years.

It is requested that sections 423(1), 424(3) and 428(4) be amended to refer to the liens under the Rural Electrification Long Term Financing Act.

This issue was raised by Alberta Transportation and Utilities.

### 93 Clarify Acquisition of Condominiums in Tax Recovery Proceedings

A concern has been raised that purchasers of condominiums in tax recovery auctions pursuant to section 423, or municipalities acquiring condominiums in tax recovery proceedings pursuant to section 424, take title to these subject to the charges for unpaid condominium fees to the date of acquisition.

The condominium corporations have successfully argued in court that the condominium fees are not "encumbrances" and are therefore not excluded by the exception clauses in the particular sections.

It is requested that sections 423 and 424 be amended by adding a clause stating that the purchaser or municipality, respectively, of a condominium acquires the land free of the charges for condominium fees before the purchaser or municipality takes title.

This issue was raised by the City of Edmonton.

### 94 Add Provincial Contributions to Costs of Contaminated Sites

A concern has been raised that there are no provisions addressing municipalities acquiring contaminated sites which have a negative value because of the contamination, and the costs related to this.

It is requested that an amendment be made to make the Province, through the Alberta School Foundation Fund, responsible for a share of the costs in the proportion of school tax/municipal tax levied.

If there is no value, then the assessment should reflect that and consequently the municipal and school tax impact should be minimal.

This issue was raised by the City of Grande Prairie.

### 95 Clarify Bidding for and Buying of Tax Recovery Land

Section 429(1) states that when a municipality holds a public auction on tax recovery property the auctioneer, the councillors, the chief administrative officer and the designated officers and employees of the municipality must not bid for or buy, or act as an agent in buying, any parcel of land offered for sale.

Concern has been raised that section 429(1) is in direct conflict with section 173(c) that allows a councillor to purchase any other property other than tax recovery property from the municipality subject to approval of the Council.

It is requested that the inconsistency between sections 173(c) and 429(1) be clarified.

This issue was raised by the City Grande Prairie.

### 96 Clarify the Warning of Sale in Tax Recovery Process for Designated Manufactured Homes

The Municipal Government Amendment Act, 1998, introduced a new tax recovery process for designated manufactured homes. Section 436.03(1)(a) states that a municipality must annually, not later than March 31, prepare a tax arrears list that shows the designated manufactured homes in the municipality in respect of which there are tax arrears for more than or less than one year.

Section 436.08(1) further states that not later than August 1 of the year following preparation of the tax arrears list, the municipality must send written notice to the affected parties warning of the impending sale. As August 1 follows the March 31 date, the words "of the year" are not required. Furthermore, it implies that a further year is available in the process and this was not intended.

It is requested that section 436.08(1) be amended by deleting the words "of the year" following "August 1".

This issue was raised by Legislative Projects, Alberta Municipal Affairs.

# 97 Enforce Reporting Requirements for Designated Manufactured Homes

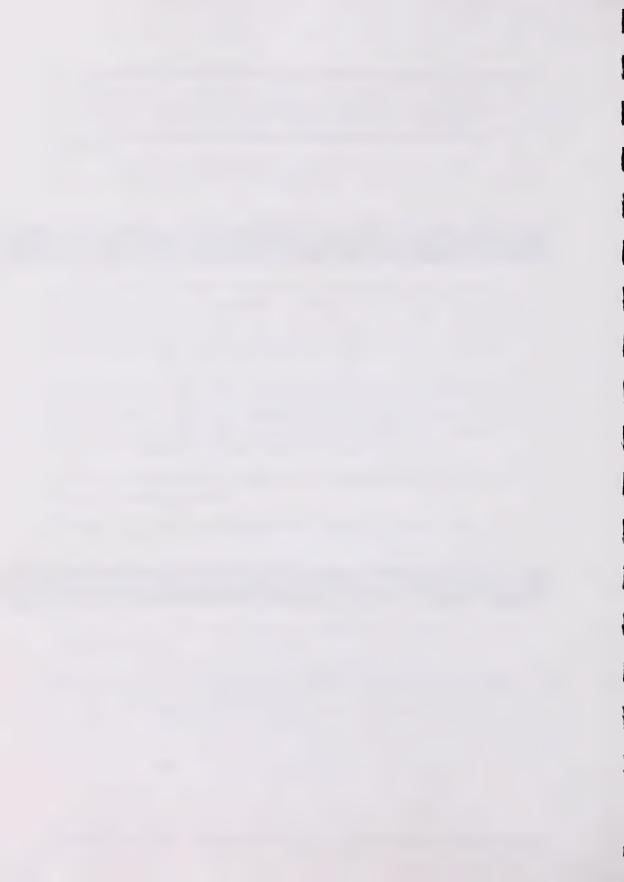
A new tax recovery process was introduced in the MGA in 1998 for designated manufactured homes.

Section 436.24 addressed reporting requirements regarding ownership and movement of designated manufactured homes. However, an enforcement clause was inadvertently left out of the final version of the Bill.

It is requested that a new subsection 436.24(3) be added that states:

(3) Failure to comply with a bylaw passed under subsection (2) is deemed to be an offence under the Municipal Government Act and is subject to the penalties specified in section 566."

This issue was raised by Legislative Projects, Alberta Municipal Affairs.





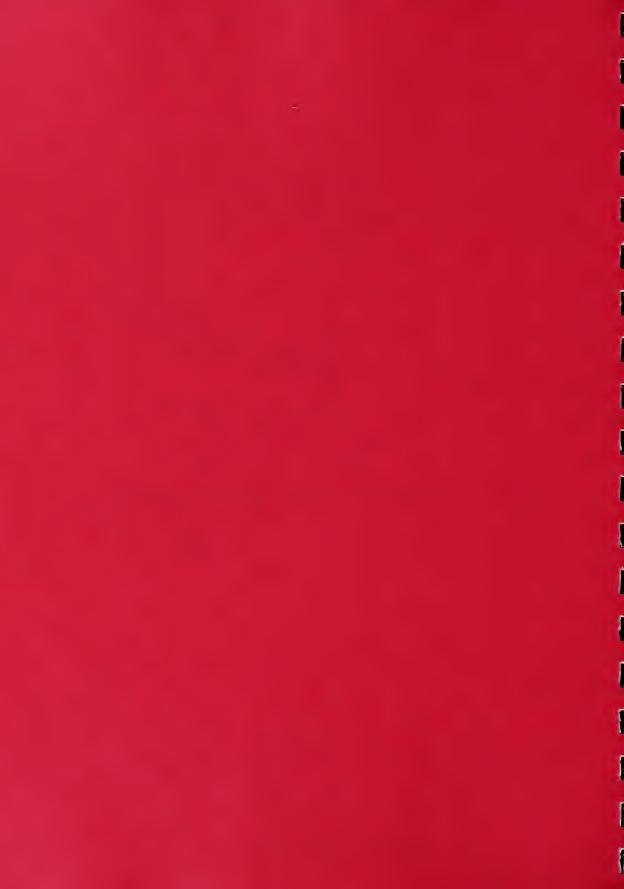
### Requested Amendments for 1999 to the Municipal Government Act Comments Relating to Tax Recovery Processes

Res	pondent:
Posi	tion:
Rep	resenting:
89	Recover Costs Related to Contaminated Parcels
90	Deny Removal of Tax Recovery Notification
91	Enforce Collection of Rent for Tax Arrears
92	Add Rural Electrification Liens on Title of Tax Recovery Lands
93	Clarify Acquisition of Condominiums in Tax Recovery Proceedings

Add Provincial Contributions to Costs of Contaminated Sites
Clarify Bidding for and Buying of Tax Recovery Land
Clarify the Warning of Sale in Tax Recovery Process for Designated Manufactured Homes
Enforce Reporting Requirements for Designated Manufactured Homes

# Requested AMENDMENTS relating to

**Planning and Development** 



### 98 Remove Retro-activity of NRCB and AEUB Decisions

Section 619 came into effect on September 1, 1995. This section states that any decision by the Natural Resources Conservation Board (NRCB) or Alberta Energy and Utilities Board (AEUB) prevails over any local land use decisions. The NRCB decision relating to the Three Sisters development in Canmore was effective November 25, 1992.

The purpose of section 619 is to establish the paramountcy of provincial decisions while maintaining flexibility for local land use decisions.

It is requested that section 619(1) be amended by inserting "after September 1,1995" after the letters "AEUB." The essence of the request is that section 619 would not apply to the NRCB decision regarding Canmore.

This issue was raised by the Alberta Urban Municipalities Association.

### 99 Add Mediation as a Prerequisite to Dispute Hearings

The MGA allows the Municipal Government Board (MGB) to hear certain disputes involving both municipalities and landowners. Specifically, these are:

- appeals pursuant to section 619;
- intermunicipal disputes; and
- disputed annexation applications.

In each of these situations the MGB is required to hold a formal hearing and to make a decision. Hearings are often time-consuming and expensive. The decision may not completely satisfy the parties involved. Prior to the dispute being filed with the MGB, it would be advantageous to require all parties involved in a dispute to attempt a joint resolution of the particular dispute.

It is requested that new provisions be added to require that a formal mediation process, or other dispute resolution processes, take place prior to any submission to the MGB in the case of intermunicipal disputes, appeals pursuant to section 619, and contested annexation applications.

A related amendment would require, in the case of intermunicipal disputes, that the outcome of the dispute resolution process would be the subject of a public hearing pursuant to section 692.

This issue was raised by the Municipal Services Branch of Alberta Municipal Affairs.

### 100 Clarify Reasonable Fees

The MGA specifies that a council may establish and charge fees for matters under Part 17 (Planning and Development).

Concern has been raised that fees charged by some municipalities are excessive and should be based on cost recovery, not profit generation. The MGA refers to the term "reasonable" in other sections based on generally accepted case law.

It is requested that the MGA be amended to include a reference to "reasonable" in the establishment and charging of fees in Part 17.

This issue was raised by the Urban Development Institute, Canmore Chapter.

### 101 Require Intermunicipal Development Plans

The MGA authorizes two or more councils to enter into an intermunicipal development plan. This provision is discretionary, not mandatory.

To address land use conflicts in fringe areas, some municipalities have suggested that intermunicipal development plans be made mandatory rather than relying on the Municipal Government Board to resolve these conflicts.

It is requested that intermunicipal development plans be made mandatory.

This issue was raised by the County of Camrose.

# 102 Reduce or Eliminate Population Threshold for Municipal Development Plans

Section 632(1) requires a municipality with a population of 3500 or more to adopt a municipal development plan. Section 632(2) makes the adoption of a municipal development plan discretionary for those municipalities with a population of less than 3500.

In the absence of an intermunicipal development plan, there is a concern that smaller municipalities will not have explicit land use policies in place that address incompatible land uses, growth pattern issues, and infrastructure requirements near municipal boundaries.

It is requested that sections 632(1) and 632(2) be amended to reduce or eliminate the population threshold for adopting a municipal development plan.

This issue was raised by Mr. Ernie Patterson, Mayor of Claresholm.

### 103 Expand Mandatory Provisions of Municipal Development Plans

The MGA outlines the requirements for the preparation of a municipal development plan including the contents of such plans. The contents have both mandatory and discretionary provisions.

It is requested section 632(3)(a)(iii) and (iv) be amended to refer to guidelines to address the coordination of land use, future growth patterns, transportation and other infrastructure with adjacent municipalities.

This issue was raised by the Town of High Prairie.

# 104 Enforce Consistency Between Land Use Bylaws and Statutory Plans

Section 638 requires that all statutory plans be consistent with one another. The MGA is silent on the relationship between a land use bylaw and statutory plans.

It is requested that a new section be added that requires land use bylaws to be consistent with statutory plans.

This issue was raised by the City of Fort Saskatchewan.

# 105 Clarify Advertising Provisions Regarding Changes to Direct Control Districts

The MGA allows a council to designate a direct control district in its land use bylaw. In this district a council may "regulate and control the use or development of land or buildings in any manner it considers necessary."

The MGA is unclear whether this wording allows a council to adopt and amend standards in the direct control district by resolution once the original district has been established. In conventional districts, council is required to hold a public hearing when a land use bylaw is adopted or amended.

It is requested that section 641(2) be amended to make it clear that any changes to the standards in a direct control district, after it has been created, will be subject to the advertising provisions of section 692.

This issue was raised by Mountain View County.

### 106 Deny Development Permit After Issuance of Stop Order

The MGA provides for the issuance of a stop order where a development does not comply with the land use bylaw, regulations, development permit or subdivision approval.

Concern has been expressed that when a development permit has been applied for after a stop order has been issued, the permit application would suspend the stop order.

It is requested that section 645 be amended to state that where a stop order has been issued, a development permit application for the same lot cannot be submitted until the conditions of the stop order have been satisfied.

This issue was raised by Leduc County.

### 107 Impose Fines Regarding Non-Compliance of Stop Order

The MGA provides a number of options for municipalities to enforce stop orders, including judicial review.

In some cases, these options may be ineffective and time-consuming.

It is requested that the MGA be amended to allow a subdivision and development appeal board to impose fines in the case of non-compliance with a stop order and adding non-payment of these fines to the tax roll.

This issue was raised by Leduc County.

### 108 Modify Off-site Levies

Section 648 allows for the imposition of an off-site levy on lands to be developed or subdivided. This levy can only be used for capital costs relating to water, sanitary sewage, or storm drainage facilities, and lands required for these facilities.

Due to increasing growth pressures, municipalities are requesting that the existing provisions be expanded to include, for example, recreation facilities and arterial roads. The Premier's Task Force on Infrastructure is reviewing this issue among others.

It is requested that section 648 be amended to include additional charges that municipalities may impose on lands to be subdivided or developed.

This issue was raised by the City of Calgary, Leduc County, and the Alberta Urban Municipalities Association.

The development industry, on the other hand, argues that in many cases off-site levy funds are reallocated to non-qualifying infrastructure. It claims, for example, that municipalities are starting to use off-site levies to pay for the replacement of aging water and sewer lines, rather than for new or expanded facilities that service new developments. There is a concern that new or replacement facilities in other areas are being charged 100 per cent to new development.

It is requested that section 648 be amended to require that off-site levies be used solely for new and expanded infrastructure that benefits new development and to ensure that all projects included in an off-site levy bylaw be specifically approved by council.

This issue was raised by the Urban Development Institute, Canmore Chapter.

### 109 Exempt Minor Subdivision Applications From Referral Process

The MGA requires a limited referral process for all subdivision applications subject to the Subdivision and Development Regulation.

While the referral process has been significantly altered as a result of the 1995 MGA amendments, concern has been expressed that in some instances referrals are not necessary (e.g. minor applications involving boundary adjustments).

It is requested that "minor" subdivision applications be exempted from the referral process subject to the approval of the Minister of Municipal Affairs.

This issue was raised by Leduc County.

### 110 Modify a Subdivision Approval

The MGA provides for a 14 day appeal period following the decision of the subdivision authority. The Act makes no allowances for adjustments to the approved subdivision plan after the appeal period has lapsed.

There are instances where minor adjustments are necessary following, for example, a survey of boundary lines.

It is requested that the MGA be amended to allow a subdivision authority to allow minor adjustments to an approved subdivision plan and/or conditions of approval.

This issue was raised by Leduc County.

### 111 Clarify Definition of Body of Water

The MGA allows a subdivision authority to require lands to be dedicated as environmental reserve in certain instances. One of these instances includes a reference to "other body of water."

The term "other body of water" is not defined in the MGA, but the Subdivision and Development Regulation [section 5(2)] specifically excludes "dugouts, drainage ditches, man made lakes or other similar man made bodies of water" in its definition of "body of water."

It is requested that section 664(1)(c) be amended to specifically exclude "dugouts, drainage ditches, man made lakes or other similar man made bodies of water" after "other body of water."

This issue was raised by Legislative Projects, Alberta Municipal Affairs.

### 112 Add Reserve Dedication For Targeted Housing

Under section 666, a subdivision authority may require the owner of land that is proposed for subdivision to dedicate up to 10 per cent of that land (net of land for environmental reserve and land made subject to an environmental reserve easement) as municipal reserve, school reserve or both.

There is a shortage of affordable housing in some Alberta communities for low income families, low income seniors and people with special needs. One reason for the shortage could be that private developers find it more profitable to serve other sectors of the housing market.

It was suggested at the Affordable Housing Symposium held in June 1998 that the imbalance in housing supply could be reduced if municipalities were authorized under the MGA to require the separate dedication of subdivision land for "targeted housing" in addition to the dedication of land for municipal and/or school reserve. This power would allow a municipality to build an inventory of sites suitable for housing projects meeting the needs of people who are inadequately served. On the other hand, the cost of the additional dedication to the developer would likely be passed on in higher costs for the other parcels in the subdivision.

It is requested that section 666 be amended to include a reserve for targeted housing.

This issue was raised at the Affordable Housing Symposium.

### 113 Clarify Use of Reserves for School Authority Purposes

The MGA specifies for what purpose reserve lands can be used. One of the prescribed uses is for "school authority purposes." The MGA does not define what the term school authority purposes means.

Concern has been expressed that school authorities are using funds collected through the money-in-lieu of reserve provisions to pay for items or programs not related to the general intent of section 671(2).

It is requested that section 671(2) be amended to either restrict the use of monies used for "school authority purposes" to land for schools and school related buildings or allow municipalities to use reserves for "municipal purposes."

This issue was raised by the Municipal District of Wainwright No. 61.

### 114 Clarify Disposal of Environmental Reserve

The MGA allows a council to "lease or dispose of an environmental reserve other than by sale for a term of not more than 3 years."

Since environmental reserve cannot be sold, it is unclear what the reference to "or dispose of" means in this context.

It is requested that section 676(1)(c) be amended to delete the words "or dispose of."

This issue was raised by Legislative Projects, Alberta Municipal Affairs.

### 115 Reduce Subdivision Appeal Period With Consent of All Parties

The MGA provides for appeals on subdivision applications by the applicant, a government department (if the application was circulated to the department pursuant to the Subdivision and Development Regulation), a council or a school authority. The appeal period is 14 days from receipt of the written decision by the subdivision authority (plus 5 days, as the date of receipt is deemed to be 5 days from the date of the decision).

Concern has been expressed that if none of the referral agencies has any objections, there is no need to wait the 19 days to process the application.

It is requested that the appeal period be shortened where all the referral agencies noted in section 678 have no objection to the subdivision application.

This issue was raised by the Oldman River Intermunicipal Service Agency.

### 116 Hear Subdivision Appeals at Local Level Only

The MGA specifies that, with the exception of specified provincial interest areas, all subdivision appeals are heard by the local subdivision and development appeal board.

It is requested that the MGA be amended to have all subdivision appeals heard at the local level.

This issue was raised by the Alberta Association of Municipal Districts and Counties.

# 117 Clarify Relationship Between Land Use Policies and Statutory Plans

The MGA states that in hearing a subdivision appeal, an appeal board "must have regard to any statutory plan" and its decision "must be consistent with the land use policies." In hearing development appeals, an appeal board "must comply with" the land use policies and statutory plan.

There are differing opinions on the meaning of the above wordings used in the subdivision appeal sections.

It is requested that subsections 680(2)(a) and (c) be amended by replacing the references to "must have regard to" and "must be consistent with" with "must comply with."

This issue was raised by the City of Edmonton.

### 118 Clarify Development Appeal Process

The MGA allows development appeals to occur in two situations:

- where the permit is refused or conditionally approved; and
- where a stop order is issued.

Concern has been expressed that the subdivision and development appeal board (SDAB) may hear arguments on the same issue twice.

It is requested that section 685 be amended so that when a development permit is appealed to the SDAB, a stop order to uphold the SDAB decision cannot be appealed.

This issue was raised by Leduc County.

### 119 Apply Evidentiary Matters to Subdivision and Development Appeal Board Hearings

The MGA allows an applicant for a development permit to appeal to the subdivision and development appeal board.

There have been a number of instances where the information raised at the appeal board hearing is significantly different than what was presented to the

development authority. This places the appeal board in a difficult position as the development authority has not had the opportunity to review and comment on the new information.

It is requested that a new section be added to reflect the principle that an applicant may present to the subdivision and development appeal board only that information that was supplied to the development authority at the time of the initial development permit application.

This issue was a resolution carried by the membership of the Alberta Association of Municipal Districts and Counties.

### 120 Allow Development Permit and Redistricting Application to Vary Appeal Board Decision

The MGA provides for the application for a development permit and a process to amend a land use bylaw district designation. This includes the situation where a person applies for a new development permit following a decision by the subdivision and development appeal board (SDAB) or applies for a redistricting following a stop order upheld by the SDAB.

It is requested that the MGA be amended so that development permit applications or redistricting applications that are intended simply to vary the SDAB decision should not be permitted.

The MGA does allow a land use bylaw to specify a time period within which a development application or change in land use designation may not be submitted following a refusal decision.

This issue was raised by Leduc County.

# 121 Remove Municipal Address in Notice Provisions for Land Use Bylaw Amendments

In addition to the normal public hearing provisions, the MGA requires that when an amendment to a land use bylaw is made to change the district designation of a parcel of land, the municipal address must appear on the notice as well as a map and legal address.

Concern has been expressed that this provision requires additional costs to and resources from the municipality, and increases the risk of error and a legal challenge where a wrong address has been recorded.

It is requested that section 692(4)(a)(i) be amended to delete the reference to "the municipal address, if any."

This issue was raised by the City of Edmonton.

# 122 Allow or Prohibit Conditions on Land Use District Redesignations

The MGA outlines the process for amending a land use bylaw including the need for a public hearing and specific notification requirements. The purpose of creating land use districts is to provide a degree of certainty to the landowner as to the uses that are permitted. The Act is silent on whether conditions can be attached to land use re-designations.

It is requested that the MGA be amended to <u>allow</u> conditions to be placed on re-designations to alleviate the potential of having parcels with no building site or ability to meet other site criteria.

This issue was raised by the Municipal District of Rocky View No. 44.

The development industry, on the other hand, argues that all land use bylaws can be structured to provide for site-specific conditions of development in specific land use districts. Site-specific concerns can be addressed at both the development permit application and subdivision application stage. It is suggested that if councils have legitimate concerns about a proposed redistricting bylaw, the proposed bylaw can be defeated or the application can be amended to delete a contentious area.

It is requested that the MGA be amended to specifically <u>prohibit</u> attaching conditions to a land use bylaw proposal.

The courts have held that redistricting a site and then limiting the uses on the site to fewer than those authorized for other lands in the same district is discriminatory and illegal.

This issue was raised by the Urban Development Institute, Canmore Chapter.

# 123 Clarify Jurisdiction of the Municipal Government Board Regarding Municipal Fringe Matters

Section 11 of the Subdivision and Development Regulation expired on March 31, 1998. The MGA and the Provincial Land Use Policies encourage intermunicipal cooperation including the preparation of joint municipal development plans. With some exceptions, subdivision appeals are heard by the local subdivision and development appeal board.

Concern has been expressed that the Municipal Government Board (MGB) could, where applicable, rule on matters in the municipal fringe areas to the detriment of municipal decisions.

It is requested that the MGA be amended to ensure provincial regulations providing protection to a municipal fringe area cannot be overturned by the MGB.

It is also requested that the Subdivision and Development Regulation and Land Use Policies be amended to disallow any development within 3.2km of an urban municipality unless a joint municipal development plan is in place.

This issue was raised by the Alberta Urban Municipalities Association.



### Requested Amendments for 1999 to the Municipal Government Act Comments Relating to Planning and Development

Respondent:		
Position:		
Rep	Representing:	
98	Remove Retro-activity of NRCB and EUB Decisions	
99	Add Mediation as a Prerequisite to Dispute Hearings	
100	Clarify Reasonable Fees	
101	Require Intermunicipal Development Plans	
102	Reduce or Eliminate Population Threshold for Municipal Development Plans	

103	Expand Mandatory Provisions of Municipal Development Plans
104	Enforce Consistency Between Land Use Bylaws and Statutory Plans
105	Clarify Advertising Provisions Regarding Changes to Direct Control Districts
106	Deny Development Permit After Issuance of Stop Order
107	Impose Fines Regarding Non-Compliance of Stop Order
108	Modify Off-site Levies

109	Exempt Minor Subdivision Applications From Referral Process
110	Modify a Subdivision Approval
111	Clarify Definition of Body of Water
112	Add Reserve Dedication for Targeted Housing
113	Clarify Use of Reserves for School Authority Purposes
114	Clarify Disposal of Environmental Reserve

115	Reduce Subdivision Appeal Period With Consent of All Parties
116	Hear Subdivision Appeals at Local Level Only
117	Clarify Relationship Between Land Use Policies and Statutory Plans
118	Clarify Development Appeal Process
119	Apply Evidentiary Matters to Subdivision and Development Appeal Board Hearings
120	Allow Development Permit and Redistricting Application to Vary Appeal Board Decision

121	Remove Municipal Address in Notice Provisions for Land Use Bylaw Amendments
122	Allow or Prohibit Conditions on Land Use District Redesignations
123	Clarify Jurisdiction of the Municipal Government Board Regarding Municipal Fringe Matters



